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IN THE

Supreme Court of the United States

OCTOBER TERM 1953

No. 869

SILVIO A. LANZA and VITO F. LANZA,
Appellants,

vs.

STATE OF NEW JERSEY, BY SALVATORE A. BONTEMPO,
Commissioner of Conservation and Economic Development,
Appellee.

On Appeal from New Jersey Supreme Court

APPELLANT'S REPLY STATEMENT

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IN THE

Supreme Court of the United States

OCTOBER TERM 1963

No. 560

SILVIO A. LANZA and VITO F. LANZA,

Appellants,

vs.

STATE OF NEW JERSEY, by Salvatore A. Bontempo, Commissioner of Conservation and Economic Development,

Appellee.

APPELLANT'S REPLY STATEMENT

(1)

The appellee's motion to dismiss asserts that appellants are barred from raising those questions cognizable in a Writ of Certiorari. It is true that the appellants have chosen to appeal; those issues which are non-appealable in and of themselves were raised in order that they may be considered along with the merits of the appealable issues. This is an acceptable manner of seeking review before this Court. See *Prudential Insurance Co. v. Cheek*, 259 U. S. 530, 546. Appellants fail to understand the claim of the appellee, on page 2 of appellee's motion, that appellants have elected to proceed only under Subsection 1, inasmuch as the appeal is taken under Subsection 2 of 28 U. S. C. §1257 and reference to Subsection 3 of 28 U. S. C.

§1257 was simply as a frame of reference for those non-appealable grounds reviewable along with the merits of the appealable issues presented by this case.

(2)

The appellee argues that in *Lanza* v. *State*, 359 U. S. 33, this Court dismissed a prior appeal in this cause for want of a substantial Federal question. That appeal was brought during an intermediate stage of the proceedings. At the time the New Jersey Supreme Court had sustained the validity of the *original Round Valley Act* (L. 1956, c. 60; N.J.S.A. 58:20-1 *et seq.*). At the same time that the appellants were seeking a final determination on the validity and constitutionality of the *original Round Valley Act*, the matter was proceeding in the trial court toward factual review on the issue of value of the property. The prior appeal to this Court took place before the trial of the compensation aspect of the case. As such, the decision of the New Jersey Supreme Court was not a final judgment under applicable case law. *Grays Harbor Logging Co.* v. *Coates-Fordney Co.*, 243 U. S. 251. Moreover, the issues raised on this appeal concerning the expiration of the condemnation power during the pendency of the action and the effect upon the appellants' rights as a result thereof, were not part of the original appeal. These issues were not presented to the New Jersey Supreme Court, inasmuch as they had not as yet arisen at the time the case was before that Court at the intermediate stage referred to. In fact, the New Jersey Supreme Court subsequently denied appellants' request for certification from the dismissal by the Appellate Division of their appeal in which they sought a determination on the questions of the expiration of the condemnation power and the intervention of Vito Lanza, but the Court expressly stated in the denial that same was made "without prejudice to the renewal of the grounds sought * * * to be raised on appeal from final judgment". (See Appendix B, page

5a). The issues were properly raised at the trial level, and now for the first time are before this Court for review. The only questions which were before this Court originally were the questions on Page 16 of the Jurisdictional Statement and none of the other questions were or could have been raised before this Court on the prior appeal. This is the first time that this Court has had before it all of the issues in the case after a full trial on the merits with the resultant final determination by the trial court and appellate courts of the State of New Jersey on the questions raised.

Respectfully submitted,

JACOB GREEN,
Counsel for Appellants.